

**JAN 18 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SANDRA RUIZ,

Defendant - Appellant.

No. 05-50554

D.C. No. CR-04-00565-RGK

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Sandra Ruiz appeals the sentence imposed following her jury conviction of one count of conspiracy, in violation of 18 U.S.C. § 371, and two counts of making false statements to the Department of Housing and Urban Development, in

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. § 1010. The district court imposed the sentence after the Supreme Court in *United States v. Booker*, 125 S. Ct. 738 (2005), rendered the Sentencing Guidelines advisory, such that the district judges could permissibly increase a sentence based on facts not proved to the jury.

Ruiz contends that because her offenses were committed before the date of the *Booker* the decision, the *ex post facto* principles inherent in the Due Process Clause, taken together with *Booker*'s Sixth Amendment ruling, barred the district court from imposing a sentence greater than the Guidelines range based on facts proved to the jury. This contention is foreclosed by *United States v. Dupas*, 419 F.3d 916, 919-921 (9th Cir. 2005) (holding that retroactive application of the *Booker* remedial opinion did not violate *ex post facto* principles incorporated into the Due Process Clause).

In her Reply Brief, Ruiz contends for the first time that because her enhancements are the product of “statutory changes” activated by *Booker*, the enhancements violate the Ex Post Facto Clause of Article I, Section 9, of the Constitution. This contention is likewise foreclosed. *See Dupas, supra.*, at 920 n.3 (rejecting *ex post facto* challenge to retroactive application of *Booker* remedial opinion after noting that the Ex Post Facto Clause of Article I, Section 9, applies only to changes in the law resulting from legislative or executive action).

**AFFIRMED.**